

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE Nos 232, 232A, 232B, 232C,
232D and 232E of 1992
(Six references)

For Approval and Signature:

HON'BLE MR.JUSTICE M.S.SHAH
and
HON'BLE MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?
 4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the concerned : NO
Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals?

COMMISSIONER OF INCOME-TAX

Versus

M/S BHOJRAJ GOPICHAND & BROS.

Appearance:

1. INCOME TAX REFERENCE No. 232 of 1992
MR MANISH R BHATT for Petitioner No. 1
..... for Respondent No. 1
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CORAM : HON'BLE MR.JUSTICE M.S.SHAH

and

HON'BLE MR.JUSTICE M.C.PATEL

Date of decision: 19/02/2004

COMMON ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE M.S.SHAH)

In these references at the instance of the
revenue, the following question is referred under Section
256(1) of the Income-tax Act, 1961 for assessment years

1980-81 to 1985-86 :-

"Whether, the Appellate Tribunal is right in law and on facts in holding that the assessee firm is entitled to registration when one of the partners was a partner in a dual capacity, namely, as an individual and as the karta of his HUF ?"

2. We have heard Mr Manish R Bhatt, learned standing counsel for the revenue. Though served, none appears for the respondent-assessee.

3. Our attention has been invited to the decisions of the Apex Court in Chandrakant Manilal Shah vs. CIT, (1992) 193 ITR 1 and in CIT vs. Kandath Motors, (1997) 224 ITR 663. In Chandrakant Manilal Shah (Supra), the Apex Court held that a karta could enter into a partnership with a coparcener of the same Hindu undivided family. In Kandath Motors (Supra), the Apex Court held that there can be no legal bar to a legal representative of the deceased partner being admitted to the partnership by the surviving partners and if the legal representative of the deceased partner is also one of the surviving partners, he can agree to join the new partnership as a nominee of the legal heirs of the deceased partner, because a partner can act in two capacities.

4. Following the aforesaid decision, our answer to the question is in the affirmative i.e. in favour of the assessee and against the revenue.

The references accordingly stand disposed of.

(M.S. Shah, J.)

(M.C. Patel, J.)

sundar/-